Filed 12/8/15 Marriage of Brown CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of DUSLEANA and NEIL BROWN.	B256680 (Los Angeles County Super. Ct. No. BD563217)
DUSLEANA BROWN, Appellant, v. NEIL BROWN, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County. Holly Fujie, Judge. Affirmed.

Dusleana Brown, in pro. per., for Appellant.

No appearance for Respondent.

Appellant Dusleana Brown (Mother) appeals from a trial court order dated April 23, 2014. Mother's arguments on appeal are largely incomprehensible, she repeatedly makes factual and procedure-related assertions without citation to the record (Cal. Rules of Court, rule 8.204(a)(1)(C)), and she improperly presents facts and inferences favorable only to her own position, ignoring the many critical facts to the contrary (Cal. Rules of Court, rule 8.204(a)(2)(C); see also *In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531.) More troubling is that Mother makes arguments that the trial court has already determined are based on a forged order and other fraud that Mother perpetrated upon the court.[1]

We affirm the trial court's April 23, 2014, order.

BACKGROUND

Appealed order

On December 24, 2013, Mother filed an ex parte application seeking, among other things, custody of her two minor children. She claimed that the children's father, Neil Brown (Father), had abducted the children and taken them out of California. In support of her application, Mother attached an August 8, 2013, ex parte order issued by Colorado's Arapahoe County District Court, stating that Mother had been granted custody of the children by a California court and that California was the home state of the children. Mother also attached a purported order by the Los Angeles Superior Court, dated December 28, 2012, stating that Mother held legal custody of the children.

On the date that the ex parte application was filed, the Los Angeles Superior Court department normally assigned to handle the matter was "dark." The application was

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[1] Just after Mother filed her notice of appeal in this matter, the trial court, on June 3, 2014, declared her to be a vexatious litigant. (Civ. Code, § 391.7) We take judicial notice of the order declaring Mother a vexatious litigant. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) In the order, the trial court noted that Mother has been known to use a number of aliases when filing court pleadings. In addition to the name Dusleana Brown, Mother has used and/or is likely to use: Dee Brown, D. Brown, Dusleana Welles, Dusleana Welles Brown, Dusleana Welles-Brown, Dee Welles, Dee Welles Brown, D. Welles, D. Welles Brown, D. Welles-Brown, and Rebe Brown.

instead heard by Judge Marc Gross. Judge Gross attempted to contact the Colorado judge who issued the August 8, 2013, order, but was unsuccessful. He then granted Mother's application and the same day (December 24, 2013) issued an order entitled "Initial Order and Warrant District Attorney and FBI" directing the Los Angeles County District Attorney and the FBI to locate Father, take temporary custody of the children, and turn them over to Mother.

On April 23, 2014, the Child Abduction Section of the Los Angeles County District Attorney's Office filed an ex parte application before Judge Holly Fujie, the judge assigned to the matter. The application sought to vacate the December 24, 2013, order, noting that Colorado's Eagle County District Court found that Colorado had jurisdiction over the children, and that, in June 2013, Judge Fujie ordered the District Attorney's Office to locate the children and return them to Father, after finding that Mother had detained and concealed the children. After the June 2013 order was issued, child abduction investigators located the children at a camp in San Bernardino County, and they were reunited with Father in Colorado.

The District Attorney's Office's ex parte application further noted that the August 8, 2013, order presented by Mother to Judge Gross in December 2013 was vacated soon after being issued, when the Arapahoe County District Court discovered that Mother obtained the order under false pretenses, was "forum shopping in an effort to get custody of her children," and presented information to the court that was "patently false." In addition, the purported December 28, 2012, order, also presented by Mother to Judge Gross, had been determined by Judge Fujie to be a forgery. In seeking to vacate Judge Gross's December 24, 2013, order, the District Attorney's Office argued that the superior court was without authority to order the FBI to take action, that the order was based on false documents, and that Colorado was the home state of the children.

Along with its ex parte application, the District Attorney's Office filed the declaration of a district attorney investigator who attempted to serve Mother with the ex parte papers. The investigator gathered every telephone number that Mother had filed with local police agencies and district attorney offices and attempted to reach Mother by

phone. He was unsuccessful in doing so, though he left messages with two voicemail systems. The investigator also attempted to locate Mother at addresses she had used as mailing addresses and at places she had previously lived, including the address Mother used in court filings, but was unable to find her. The declaration noted that Mother had previously evaded service of process.

Judge Fujie heard the ex parte application on April 23, 2014. At the hearing, the investigator testified under oath. The court granted the application, finding that the District Attorney's Office made a good faith attempt to notify Mother of the hearing, and that the December 24, 2013, order was issued in excess of the superior court's jurisdiction. The court vacated the December 24, 2013, order, ordered that the children remain with Father, and found that Colorado retained jurisdiction over the children.

Mother appealed the order.

June 3, 2014, order

Soon after Mother filed her notice of appeal, the trial court entered the June 3, 2014, order declaring Mother to be a vexatious litigant. The order, which is 45 pages long, also decided other issues and contained a lengthy recitation of the procedural history of the case. Because Mother's appellate brief, including the statement of facts, does not accurately describe the background of this case, we summarize pertinent points from the June 3, 2014, order.[2]

In April 2012, Mother filed a dissolution petition in California, which she served on Father on May 1, 2012 (case No. BD563217; the Los Angeles case). On May 9, 2012, Father filed a petition for dissolution in Eagle County, Colorado, together with a motion for an order determining that Colorado had jurisdiction (case No. 2012DR114; the Eagle County case). These papers were personally served on Mother in Colorado on May 17, 2012. Father's motion was heard on June 28, 2012, with the Eagle County court finding

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[2] Father did not file a respondent's brief. It appears that Father may not have notice of this appeal. The address that Mother provided to this Court for Father is incorrect, and mail sent to the address is returned unopened.

that Colorado properly had jurisdiction, including over custody issues because the children were residents of Colorado at commencement of the California and Colorado proceedings and for six months prior. In finding that the children were residents of Colorado, the Eagle County court relied on, among other things, property records and school records demonstrating the children's enrollment in a Vail, Colorado, elementary school.

In August 2012, the Eagle County court issued further orders reiterating its findings of jurisdiction, and it ordered Mother to appear in court with the children. Mother failed to appear. After taking testimony from an Eagle County Department of Human Services caseworker, the court found that, with the children in Mother's control, there were "serious concerns regarding the safety and well-being of the children, including but not limited to concerns regarding their current whereabouts, whether they are being fed adequately, and whether their living conditions are habitable." The Eagle County court asserted temporary emergency jurisdiction over the children and ordered the children be immediately placed in Father's care and custody.

On December 4, 2012, in response to numerous motions by Mother challenging the findings on jurisdiction, the Eagle County court held a hearing on the issues of whether the court had personal jurisdiction over Mother and subject matter jurisdiction over the dissolution of marriage action, as well as jurisdiction over the children pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). After taking testimony, the court again found that it had jurisdiction and that Colorado was the home state of the children. The court further noted that Mother had repeatedly made herself unavailable for service of process by personal service and mail.

Later that day of December 4, 2012, following the conclusion of the Eagle County hearing, Mother for the first time filed an application seeking custody in the Los Angeles case. That application was unsuccessful. Nevertheless, on December 28, 2012, Mother managed to obtain, in the Los Angeles case, a limited-scope domestic violence temporary restraining order. Mother later lifted the commissioner's signature from this order to create a forged order of the same date; the forged order was in a form not used by

Los Angeles Superior Court. The actual restraining order was dissolved soon after being issued.

On January 8, 2013, the Los Angeles Superior Court issued an order finding that Colorado properly had jurisdiction, based on proof that the children were enrolled in school in Colorado until at least May 4, 2012, after the California petition was filed, and that the home state of the children under the UCCJEA was Colorado. On January 11, 2013, the Eagle County court issued a permanent order finding jurisdiction in Colorado and awarding full parental responsibilities to Father. As of that date, no custody or visitation orders had been issued by any California court. Mother appealed to the Colorado Court of Appeals, but her appeal was dismissed.

In April 2013, Mother filed a new family law case in California, in a different courthouse, under the pseudonym "Dee Brown," case No. LQ015227; the Van Nuys case). In the Van Nuys case, Mother did not disclose the Los Angeles case or details of the Eagle County case. Mother instead alleged that Father had threatened to take the children from her and brought men from Colorado to help kidnap them. Mother did not mention that Father had been granted full custody of the children, or that the superior court in the Los Angeles case had recently ordered the District Attorney's Office to locate the children and return them to Father. Unaware of the proceedings, the judge in the Van Nuys case issued a domestic violence restraining order and a child custody order in Mother's favor on April 24, 2013.

On June 19, 2013, the District Attorney's Office reported that the children were found at a summer camp in San Bernardino County. The camp director stated that Mother had left the children there. The Los Angeles court ordered that the children be surrendered to the custody of Father on that date.

On June 24, 2013, Mother filed an ex parte application in the Van Nuys case, requesting that the court order the District Attorney's Office to locate the children, take custody from Father, and deliver them to Mother. Mother again did not inform the court of any of the proceedings in the Los Angeles or Eagle County cases. The court issued an order to the District Attorney, as requested, and ruled that Mother had sole legal and

physical custody of the children. Mother was required to give notice to Father, but apparently did not do so.

Mother than tried to remove the Los Angeles case to the United States District Court for the Central District of California. The district court denied the attempted removal. Nevertheless, in later proceedings in the Los Angeles case, Mother submitted a purported district court order returning the children to the custody of Mother. This purported order showed clear signs of tampering and the district court docket contained no record of any such order. Again, the Los Angeles court determined that the document was a forgery.

On July 3, 2013, Mother filed an action in Lake County, Colorado, in which she attempted to register a California custody order with the Colorado courts. The case was dismissed on July 9, 2013, when the judge learned of the pending Eagle County case.

Then, on August 8, 2013, Mother, using the pseudonym "Dee Brown," filed another new case, this time in Arapahoe County, Colorado (case No. 13DR2120; the Arapahoe County case). Mother sought an order requiring law enforcement to return the children to Mother. Mother did not disclose the existence of the Eagle County case. Further, Mother's motion was based on the forged December 28, 2012, order, as well as the order issued in the Van Nuys case, where the court was unaware of the other pending actions. The Arapahoe County court granted Mother's motion on August 8, 2013.

On August 19, 2013, the Arapahoe County court vacated the August 8, 2013, order, finding that it had been issued under false pretenses. The court stated, in part: "Ms. Dee Brown (Petitioner) came to Arapahoe County and displayed Court Orders from California demonstrating that California had awarded her custody of her two minor children. Ms. Brown asserted that Father (Respondent), Neil Brown, had taken the children from her. Ms. Brown asserted she was working with the FBI and needed an immediate Court Order and Writ of Assistance to get law enforcement to assist her in getting the children back. . . . This Court placed Ms. Brown under oath and she affirmed the California Orders, asserted she had custody of the children and she needed assistance in getting them returned." The court vacated the August 8, 2013, order and dismissed the

Arapahoe County case upon learning that Mother obtained the presented California orders under false pretenses, that she was "forum shopping," and that the information she provided to the court was "patently false." It affirmed the determination that Father legally had custody of the children and that the case was properly pending in Eagle County.

On September 18, 2013, the Van Nuys court noted that Mother lodged with the court a copy of the August 8, 2013, Arapahoe County order. The Van Nuys court discovered that the Arapahoe County court had subsequently vacated this order. On October 26, 2013, the Van Nuys court denied Mother's request to enforce the previously issued restraining order, finding that California did not have jurisdiction and that Colorado was the children's home state. It vacated all custody orders it had previously issued.

On December 24, 2013, department 87, the courtroom handling the Los Angeles case, was "dark." Mother filed an ex parte application seeking, among other things, custody of the children. She was directed to Department CE2D, where the sitting judge, Judge Gross, was unfamiliar with the case. Mother presented the forged December 28, 2012, order and the August 8, 2013, Arapahoe County order. On the basis of these forged and vacated orders, Judge Gross issued the "Initial Order and Warrant District Attorney and FBI," which purported to order the District Attorney's Office and the FBI to locate the children and deliver them to Mother. As noted above, this order was subsequently vacated by Judge Fujie, the judge assigned to the case, on April 23, 2014.

DISCUSSION

Mother is acting in propria persona. Mother's appellate brief refers to numerous issues that she apparently feels were improperly decided, but most of Mother's contentions are not based on cogent legal argument or citations to the record. We cannot develop Mother's arguments for her and will not address passing references to perceived wrongs. (See *First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1 [appellant's status as appearing in propria persona does not provide a basis for preferential consideration]; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th

814, 830 ["We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived."].) Moreover, Mother appears to take issue with orders entered long before this appeal was filed, including orders issued in a foreign state. We, of course, lack jurisdiction to reverse such orders. (Cal. Const., art. VI, § 11; Code Civ. Proc., §904.1; Cal. Rules of Court, rules 8.104(a), (b).)

Mother's notice of appeal, on the other hand, references only the Los Angeles court's April 23, 2014, order vacating the December 24, 2013, order. This April 2014 order is appealable. (Fam. Code, § 3454; Code Civ. Proc., § 904.1(a)(6).)

Mother fails to show that the trial court erred in vacating the December 24, 2013, order. Mother asserts that she was entitled to a full hearing before the trial court could vacate the December 24, 2013, order. The trial court properly found that Mother had valid and adequate notice of the April 23, 2014, hearing. In connection with the ex parte application, a district attorney investigator filed a lengthy declaration detailing his thorough attempts to provide notice of the hearing to Mother, and the investigator testified at the hearing. The trial court therefore was correct in finding that a sufficient attempt was made to notify Mother, particularly considering that Mother had repeatedly demonstrated a propensity to evade service.

Moreover, even if Mother could show that her presence was required at the hearing (regardless of the fact that a good faith attempt at service was made), she fails to demonstrate prejudice. The trial court had no reasonable choice but to vacate the December 24, 2013, order, since Mother obtained the December order by submitting a forged order and a vacated order. There was a pressing need to vacate the order for being obtained by fraud upon the court. (See *Guardianship of Levy* (1955) 137 Cal.App.2d 237, 245.)

DISPOSITION

The April 23, 2014, order is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.